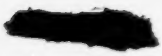

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IN THE

# Supreme Court of the United States

**OCTOBER TERM 1964**

**No. 275**

SWEDISH AMERICAN LINES,

*Petitioner,*

—against—

JOSEPH J. FERRANTE, ANTONIO HRONCICH and VITO SALVEMINI,

*Respondents,*

—and against—

NACIREMA OPERATING CO., INC.,

*Respondent-Impleaded,*

## BRIEF OF RESPONDENT-IMPLEADED, NACIREMA OPERATING CO. INC. IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI BY PETITIONER, SWEDISH AMERICAN LINES

LEO I. McGOUGH
*Counsel for Respondent-Impleaded*
*Nacirema Operating Co. Inc.*
415—32nd Street
Union City, N.J.

GEORGE P. MOSER
*Of Counsel*

WILLIAM V. ROVETO
*On the Brief.*

HUDSON DISPATCH, 404 38th Street, Union City, New Jersey

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### Opinions Below

The opinion of the Circuit Court of Appeals for the Third Circuit is reported in 331 F. 2d 571 and is printed in Petitioner's Appendix B. There was no District Court opinion.

### Question Presented

Whether or not an accident sustained by a longshoreman caused solely by the stevedore's negligent

use of the ship's equipment, which is reasonably sound and fit for its intended purpose, renders the ship unseaworthy?

## Statement of the Case

This is an action brought by libelants, three longshoremen against the Petitioner, Swedish American Lines, seeking a recovery for injuries sustained as a result of the alleged negligence of the shipowner and the unseaworthiness of its vessel. The longshoremen were employed by the Respondent-Impleaded, Nacirema Operating Co. Inc., and were injured during the course of unloading certain boards from one of the holds of the M/S "Maltesholm", owned by the Petitioner, Swedish American Lines. The latter impleaded the employer, Nacirema Operating Co. Inc. seeking indemnity from Nacirema in case the shipowner was held liable to the libelants.

At the time of the accident, October 28, 1960, the employees of the stevedore were engaged in discharging a load of plywood walking boards. These boards had been piled side by side into two stacks and rope slings, provided by the vessel, were placed around both piles of boards so that same could be lifted out of the hatch. While being lifted, the load came apart and some of the boards fell from the load, striking the libelants.

The libelants' expert witness stated that the standard and proper method of unloading the boards was to hoist one stack or pile at a time and that piling the boards in two rows, as was done in this case, would be an element that would cause them to fall; that the

use of rope or wire slings was standard practice and it would not matter whether a rope or wire sling was used. At the close of the libelants case as to liability, on motion of the vessel, Swedish American Lines, the Libel was dismissed, both as to the counts of unseaworthiness and negligence. On motion of Nacirema, the impleading petition for indemnity was also dismissed. On appeal, the Court of Appeals reversed and remanded the entire matter to the District Court for a new trial.

The Court of Appeals, noting that this court has not yet spoken of the precise question, held that a stevedore's negligence in the use of a ship's seaworthy equipment makes the ship unseaworthy (Appendix B, page 12b). The basic issue which underlies this problem is whether a shipowner is under an absolute obligation to furnish a longshoreman with an accident-free ship or whether the shipowner owes an absolute duty to a longshoreman to make stevedoring an accident-free occupation.

## Reasons in Support of Granting the Writ

The Court of Appeals for the Third Circuit in declaring that a stevedore's sole negligence in the use of a ship's seaworthy equipment makes the ship unseaworthy and liable to an injured longshoreman, has rendered a decision which is in conflict with the decisions of other Courts of Appeals on the same matter, namely, the First, Second, Fourth and Ninth Circuits, which have uniformly refused to extend the shipowner's warranty of seaworthiness to a negligent use by longshoremen of seaworthy appliances. *Arena* v. *Luckenbach Steamship Co.*, 279 F.2d 196 (1 Cir.

1960), cert. denied, 364 U.S. 895 (1960); *Puddu* v. *Royal Netherlands Steamship Co.*, 303 F.2d 752 (2 Cir. 1962), cert. denied, 371 U.S. 840 (1962); *Spinelli* v. *Isthmian Steamship Co.*, 326 F.2d 870 (2 Cir. 1964), cert. denied May 18, 1964; *Blankenship* v. *Ellerman's Wilson Line New York, Inc.*, 265 F.2d 455 (4 Cir. 1959); *Edward* v. *Steivns*, 207 F.2d 734 (4 Cir. 1953); *Billeci* v. *United States*, 298 F.2d 703 (9 Cir. 1962). The decision of the court below does not conform to fairly well settled law as expressed in the above cases and in *Berti* v. *Compagnie de Navigation Cyprien Fabre*, 213 F.2d 397, 400 (2 Cir. 1954), wherein the court said

> "If plaintiff's injuries resulted solely from the manner in which the work was done under American's (the stevedore) supervision, he has no recourse against Cyprien (the shipowner)".

As stated in *Imperial Oil Ltd.* v. *Drlik*, 234 F.2d 4. 8 (6 Cir. 1956), cert. denied, 352 U.S. 941:

> "The obligation of the vessel owner to provide seaworthy appliances has not been extended to require the owner to keep those appliances from being used in a negligent manner."

Furthermore, the decision by the Court of Appeals in the instant case has decided this important question in a way which is in conflict with applicable decisions of this court, as found in *Mitchell* v. *Trawler Racer, Inc.*, 362 U.S. 539, 80 S. Ct. 924 (1960). For it was expressly stated in *Mitchell* (page 550 of 362 U.S.):

> "What has been said is not to suggest that the owner is obligated to furnish an acciden. free

> ship. The duty is absolute but it is a duty only to furnish a vessel and appurtenances reasonably fit for their intended use. *The standard is not perfection but reasonable fitness; not a ship that will weather every conceivable storm or withstand every imaginable peril of the sea,* but a vessel reasonably suitable for her intended service". (Italics added)

Thus, the effect of the decision below is to impose upon a shipowner an absolute obligation to furnish a longshoreman with an accident-free ship. Permitting claims to be enforced due to accidents caused solely by the misuse of sound equipment does not square with the Mitchell principle that not every "imaginable peril" is covered by the warranty of seaworthiness. If the mere happening of an accident or injury was sufficient to base a finding of unseaworthiness, the standard would be not reasonable fitness as declared in *Mitchell,* but that of perfection and the shipowner would be obligated to furnish an accident-free vessel. See also *Titus* v. *Santorini,* 258 F.2d 352 (9 Cir. 1958); *Ezekiel* v. *Volusia Steamship Co.,* 297 F.2d 215 (2 Cir. 1961).

In *Mosely* v. *Cia. Mar. Adra. S.A.,* 314 F.2d 223 (2 Cir. 1963), cert. denied, 375 U.S. 829 (1963) at page 228 the court stated:

> "* * * the most that Mosely proved was that the hook slipped while being used. But, as we have many times said, the mere fact that an accident occurs and a seaman is injured while using an appurtenance in performance of his duties, cannot, without more, establish that a vessel is unseaworthy".

Another reason why this court should grant the petition for review is that it is quite apparent that the decision of the Court of Appeals below would have several far reaching effects. One such effect would be that a longshoreman, injured for any reason whatsoever while working aboard ship, would be entitled to recover damages. And if the basis of the award of damages is solely an act of negligence on the part of the longshoreman, the shipowner will invariably recover full indemnity from the stevedore employer. Thus the result would completely render ineffective the exclusive liability provisions of the Longshoremen's and Harbor Worker's Compensation Act, 44 Stat. 1424 (1927) as amended 33 U.S.C. Sec. 901-950 (1958). To impose this additional liability upon the employer in the situation where his sole negligence causes the injuries would radically distort the intent of Congress in enacting the Longshoremen's Act and would deprive the employer of the immunity which that statute granted to him in exchange for his absolute, though limited, liability to secure compensation to his employees. 44 Stat. 1426 (1927). 33 U.S.C. Sec. 905 (1958).

The issue concerning the creation of an unseaworthy condition or the negligent use of otherwise seaworthy equipment is an important question which has been and will continue to be a basis of many claims in maritime law and in actions over for indemnity. It is important that the legal concepts relating to this type of case be settled by this Court. Clarification of the rights of the parties to such actions is urgently needed and the rights, duties and obligations of stevedore-employers, in relation to the Longshoremen's Act, should be defined.

It is respectfully submitted that this Court should grant the Petition for Writ of Certiorari filed by the Petitioner, Swedish American Lines, so that the matter will be fully considered and the law clarified for the future guidance of all courts called upon to interpret and apply maritime law.

## CONCLUSION

**For the reasons set forth above, and in the Petition for Certiorari filed by Swedish American Lines, it is respectfully urged that the Petition for Writ of Certiorari should be granted.**

Respectfully submitted,

LEO I. MCGOUGH
*Counsel for Respondent-Impleaded Nacirema Operating Co., Inc.*

GEORGE P. MOSER
*Of Counsel*

WILLIAM V. ROVETO
*On the Brief.*